IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4489 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VADILAL TARACHAND KOTHARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4489 of 1997

MR DIPAK R DAVE for Petitioner No. 1

Mr. HD Dave, AGP for Respondent No. 1

Shri Barot for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: /04/2005

CAV JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction on the respondents to extend benefits under the Swatantra Sainik Sanman Pension Scheme, 1980 {hereinafter referred to as "the said Scheme"} from the date of its

implementation and also for grant of interest from the date of implementation.

2. During twentyfifth anniversary of Independence, the Central scheme for grant of pension to freedom fighters and their families from Central Revenues was introduced by the Government of India. The Scheme commenced from 15th August 1972 and provided for grant of pension to living freedom fighters and the families of martyrs. Till 31st July 1980 the freedom fighters' pension was admissible only to those who were in need of financial assistance on account of their meagre annual gross income. Therefore an annual income ceiling of Rs.5000/= was enforced for eligibility to pension. However, from 1st August 1980 the benefit of the pension Scheme has been extended to all freedom fighters as a token of Sanman to them.

2.1. The said Scheme is called 'Swatantra Sainik Sanman Pension Scheme, 1980. Detailed eligibility criteria have been laid down in the Scheme for becoming eligible for the said Scheme.

3. It is the case of petitioner that he was actively engaged in the Freedom Movement against British Government in 1942. According to him his case falls within the criteria laid down by the 1980 scheme as he has remained underground for more than 6 months during the Freedom Movement in the year 1942-1943. The petitioner has therefore by his separate application applied for pension under the said scheme. However, the respondent No.2 turned down his request stating that his case is not covered under the said scheme.

4. It is the case of the petitioner that many co-workers of the petitioner were detained in Jail and there was a warrant of arrest against the petitioner and as the petitioner came to know about the warrant he went underground and police could not get/arrest the petitioner. It is also the case of the petitioner that his name was reflected in the Police Diary also and he remained underground during the period between 15.8.1942 and 30th June 1943. It is also the case of the petitioner that because of the aforesaid activity even the petitioner also lost one year of his education. Thereafter the petitioner passed his Matriculation Examination; thereafter became a Doctor also; and after independence the petitioner went to Hubli somewhere in November 1953 and by starting medical practice he settled there. It is also the case of the petitioner that the petitioner took active participation during Bhudan

Movement and became Chairman of Reception Committee of Conference of Bhudan workers held at Hubli. That he also remained as Vice President of Karnataka Sarvoday Mandal for few years and was active member of Indian Medical Association. It is the case of the petitioner that according to the requirements of the scheme the petitioner has supplied the Certificate issued by late Shri Nirubhai Desai, well-known freedom fighter. The petitioner has also produced the Affidavit of one Vrundavan Popatlal Shah, another freedom fighter who has also worked with the petitioner during the 1942 Quit India Movement and contended that the case of the petitioner is required to be considered for grant of pension under the aforesaid scheme.

5. Shri Barot, the learned Additional Central Government Standing Counsel appearing on behalf of the Central Government relying upon the affidavit-in-reply has submitted that the petitioner's claim that he remained underground during the period 15.8.1942 to 30.6.1943 and that Non-availability of Record Certificate produced by the petitioner from the Jail authority is not accepted for the reason that he never went to Jail and has claimed for suffering only for having remained underground. It is further submitted that the Personal Knowledge Certificate issued by Shri Nirubhai Babulal Desai and the affidavit submitted by Shri Vrundavan Popatlal Shah cannot be considered when it is not accompanied by Non-Availability of Record Certificate issued by the concerned authority of the State Government.

6. Learned counsel for the respondent relied upon the decision of the Supreme Court in the case of Mukund Lal Bhandari & Ors. Vs. Union of India, reported in AIR 1993 SC 2127 wherein it is held that the petitioners would undoubtedly be entitled to the benefit of the scheme Provided, of course, they produce the relevant material in support of their claim and that the pension should, of course, be sanctioned only after the required proof is produced. She therefore contended that if sufficient proof is not available then the pension can be refused by the authority.

7. In the context of the above submissions, it is required to be noted whether the petitioners were able to produce sufficient proof as per the Scheme. Clause 9 of the Scheme states as to how to prove the claim which reads as under:

The applicant should furnish the documents

indicated below whichever is applicable.

(a) Imprisonment/Detention etc., Certificate from the concerned Jail Authorities, District Magistrates or the State Government in case of non-availability of such certificates, co-prisoner certificate from a sitting M.P. or M.L.A. or from an ex.M.P. or an ex.M.L.A. specifying the jail period (Annexure-I in the application form).

(b) Remained underground.

(i) Documentary evidence by way of Court's/Government orders proclaiming the applicant as an offender, announcing an award on his head, or for his arrest or ordering his detention.

(ii) Certificates from veteran freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not forthcoming due to their non-availability.

7.1. Thus, the requirement is a certificate from veteran freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not forthcoming due to their non-availability. It is required to be noted that the period of give years has been later on reduced to two years in case of freedom fighters who had themselves undergone imprisonment.

8. In the present case, as per the affidavit-in-reply the respondent Central Government has not considered the case of the petitioner as fit for grant of pension under the aforesaid scheme on the ground that the Certificate issued by Shri Nirubhai Babulal Desai and Affidavit submitted by Shri Vrundavan Popatlal Shah being not accompanied by Non-Availability of Record Certificate issued from the concerned authority of the State Government. This Court has passed the order on 2.8.2003 when the matter was earlier heard finally and considering the submissions made by the learned Addl. Standing Counsel for the Central Government that the certificate dated 12th September 1989 issued by the District Superintendent of Police cannot be said to be an authenticated certificate from the State Government and

when the Central Government is reported by the competent authority of the State Government that no record is available the matter can be considered on the basis of the Certificate of Veteran Freedom Fighter which is the alternative requirement. This Court therefore directed the State Government to verify as to whether the record pertaining to the year 1942 in respect to the warrant issued by the Government at the relevant point of time is in existence, and, if yes, he may also verify as to whether any warrant or detention order was issued in respect to the petitioner, i.e. Dr. Vadilal Tarachand Kothari, and if the record is not available, he may also declare accordingly by an appropriate affidavit. In response to the said order dated 2-8-2003 an Affidavit is filed sworn by Deputy Secretary, Home Department, Sachivalaya, Gandhinagar wherein it is declared that he has verified the records and upon verification it is found that there is no record of the year 1942 available with the police authorities and the jail authorities and such records do not show the name of the petitioner in the record pertaining to the freedom fighters who had undergone imprisonment in the year 1942. In the affidavit it is further submitted that in the year 1989 also the District Superintendent of Police, Ahmedabad (Rural) had given reply to the petitioner by letter dated 12th September 1989 stating that there is no record pertaining to the year 1942 available with the authorities. Thus, now it is on record on affidavit by the competent authority of the State Government that no record is available.

9. In that view of the matter, now the Central Government is directed to consider the case of the petitioner on the basis of the Certificate of Veteran Freedom Fighter, i.e., Shri Nirubhai B. Desai and affidavit of Shri Vrundavan Popatlal Shah, which is the alternative requirement. It appears from the record and even from the affidavit-in-reply filed on behalf of the Central Government that as there was no Certificate issued by the concerned authorities of the State Government with regard to non-availability of records only and therefore now in view of the affidavit filed by the Deputy Secretary, Home Department, State of Gujarat, which is directed to be considered as the 'Non-Availability of Record Certificate', there is no other reason or cause shown by the respondents which disentitles the petitioner to pay the Swatantra Sainik Sanman Pension. The respondents, in particular the respondent No.2 is directed to pay the Swatantra Sainik Sanman Pension to the petitioner from the date of his application,i.e., with effect from 1989.

10. For the reasons stated above, the petition succeeds and the respondent No.2 is directed to sanction and pay pension to the petitioner under the Swatantra Sainik Sanman Pension Scheme, 1980, with effect from the date of his application. The respondents are directed to calculate the amount of arrears of pension under the aforesaid Scheme accordingly and pay the same within three months from the date of receipt of this writ of this Court and shall continue to pay in future in accordance with the said scheme. Looking to the peculiar facts and circumstances of the case, the interest need not be paid if the arrears of pension is paid within the period of one month from the date of calculating the amount of arrears of pension, meaning thereby within 4 months from the date of receipt of writ of this Court. If the arrears of pension and the actual pension is not paid within the time stipulated hereinabove, the petitioner will be entitled to get interest at the rate of 9 per cent on the amount of arrears. Rule is made absolute to the aforesaid extent with no order as to costs.

{ M.R. Shah, J. }

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